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COUNCIL AGENDA: 09/13/05

ITEM: 3.4

Memorandum

TO: Mayor and City Council

FROM: Vice Mayor Cindy Chavez

SUBJECT: Response to Grand Jury Report on
Norcal Agreement

DATE: September 12, 2005

APPROVED:

DATE:

9/12/05

RECOMMENDATION:

Direct the City Attorney's Office to work with the presiding judge to allow a formal response to the Grand Jury report following the conclusion of the independent investigation in order to allow incorporation of its findings and recommendations.

BACKGROUND:

The Civil Grand Jury issued its report of the Norcal contract for garbage and recycling services to the public on June 13, 2005. This report raised several substantive issues about the initial contract and the subsequent amendment, and raises a series of legal and ethical questions that warrant a timely, thorough, and objective response.

It is vital that the response to the Grand Jury is accurate, thorough, and above reproach. Such a document is not possible until the independent investigation is complete. Recognizing that the response before us at this time was prepared by the authors in order to be in compliance with the penal code requiring a formal response within 90-days, by waiting to respond to the document until the independent investigation currently underway is complete, the City will be better positioned to author a complete and fair assessment of the Norcal Agreement and the City's subsequent actions.

The Grand Jury recognized the importance of a third party review in its most important recommendation – that the San Jose City Council should retain the services of a special investigator. On June 28, 2005, the City Council implemented this recommendation and approved retention of an independent investigator to review the numerous issues raised in the Grand Jury Report. To protect against any inappropriate influence, retired judges Peter Stone, Harry Lowe, and Joseph Biafore are overseeing the investigation and will work with the independent investigator, not city staff. The independent investigator, Chris Scott Graham, will have the freedom to conduct the investigation as he sees fit, including the possibility of using subpoenas or open hearings as necessary.

There are several good questions and points of information that have been raised by staff, the Council, and the Mayor's office, and it is important for the investigator to have them at his disposal in order to conduct a fair and thorough investigation. City staff, the Council, and the Mayor's office

should provide any questions and facts directly to the independent investigator by October 1, 2005, or another date determined by Mr. Graham, in order to assure a timely and complete investigation.

It is only after the completion of this independent investigation that the City will be in a position to fully respond to the Grand Jury report and begin the process of restoring the public trust.